

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KIMBERLY DIVELBLISS
TY DIVELBLISS
513 Venus Avenue
Alomogordo, NM 88310

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7/16/07 2:03
2007CV3025

PLAINTIFFS

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Civil Action No.:

v.

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MEERA APPASWAMY, M.D.
500 Memorial Avenue
Cumberland, MD 21501

*

RL 2007CV3025

AND

*

CUMBERLAND ANESTHESIA & PAIN
MANAGEMENT ASSOCIATES, PC
c/o Resident Agent, John J. Coyle, Jr.
110 Washington Street
Cumberland, MD 21501

*

DEFENDANTS

*

COMPLAINT AND PRAYER FOR JURY TRIAL

The Plaintiffs, Kimberly and Ty Divelbliss, by and through their attorneys, Henry E. Dugan, Jr., George S. Tolley, III, Dugan, Babij & Tolley, LLC, sue the Defendants Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., saying:

1. This matter was filed with the Health Care Alternative Dispute Resolution Office of Maryland on or about July 16, 2007. A copy of the Statement of Claim is attached hereto as Exhibit A and prayed to be taken as part hereof.
2. The Plaintiffs filed a Certificate of Merit and Report with the Health Care Alternative Dispute Resolution Office of Maryland on or about October 5, 2007. A copy

of the Certificate of Merit and Report is attached hereto as Exhibit B and prayed to be taken as part hereof.

3. The Plaintiffs filed an Election to Waive Arbitration with the Health Care Alternative Dispute Resolution Office of Maryland on or about October 5, 2007. a copy of the Election to Waive Arbitration is attached hereto as Exhibit C and prayed to be taken as part hereof.

4. These claims were properly filed in the Health Care Alternative Dispute Resolution Office of Maryland as they exceed Twenty Five Thousand Dollars (\$25,000.00) in damages.

5. An Order of Transfer to the United States District Court, District of Maryland was issued by the Health Care Alternative Dispute Resolution Office of Maryland on October 2007. A copy of the Order of Transfer is attached hereto as Exhibit D.

6. The Plaintiffs relate back to , repeat, re-allege, adopt and incorporate by reference the initial Statement of Claim filed with the Health Care Alternative Dispute Resolution Office on or about July 16, 2007, as though fully set forth herein.

PARTIES

7. The Plaintiff, Kimberly Divelbliss, is an adult citizen of the State of New Mexico residing at 513 Venus Avenue, Alamogordo, New Mexico 88310.

8. The Plaintiff, Ty Divelbliss, is an adult citizen of the State of New Mexico residing at 513 Venus Avenue, Alamogordo, New Mexico 88310.

9. The Defendant/Health Care Provider, Meera Appaswamy, M.D., is an adult citizen of the State of Maryland, with her principal place of business at 500 Memorial Avenue, Cumberland, Maryland 21501.

10. The Defendant/Health Care Provider, Cumberland Anesthesia and Pain Management Associates, P.C., is a professional corporation incorporated under the laws of the State of Maryland with its principal place of business at 500 Memorial Avenue, Cumberland, Maryland 21501.

11. At all times, the Defendant/Health Care Provider, Cumberland Anesthesia and Pain Management Associates, P.C., acted through its real, apparent and/or ostensible agents, servants and/or employees, including Meera Appaswamy, M.D.

JURISDICTION AND VENUE

12. The amount of this claim exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different States, and venue is appropriate in the United States District Court for the District of Maryland as the forum in which the acts complained about occurred, and where the Defendant/Health Care Providers reside, carry on a regular business, are employed, and/or habitually engage in a vocation.

COUNT I

(Negligence -- Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C.)

13. The Plaintiffs, Kimberly and Ty Divelbliss, repeat, reallege, adopt and incorporate by reference paragraphs 1 through 6 of this Statement of Claim as though fully set forth herein.

14. At all times of which the Plaintiffs complain, the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain management Associates, P.C., individually and through their real, apparent and/or ostensible agents,

servants and/or employees, were licensed to practice medicine in the State of Maryland and represented to the public and to the Plaintiffs possession of that degree of skill, knowledge and ability ordinarily possessed by a reasonably competent medical providers practicing in the medical specialty of anesthesiology.

15. At all times of which the Plaintiffs complain, the Defendant/Health Care Provider, Meera Appaswamy, M.D., was acting as the real, actual and/or apparent agent, servant and/or employee of the Defendant/Health Care Provider, Cumberland Anesthesia and Pain Management Associates, P.C.

16. The Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their agents, servants and/or employees, owed to the Plaintiffs the duty to exercise that degree of care, skill and judgment ordinarily expected of a reasonably competent medical corporation of their chosen specialty acting in the same or similar circumstances. That duty included the performance of adequate and appropriate tests and procedures to determine the nature and severity of any medical conditions suffered by the Plaintiff, Kimberly Divelbliss; the prompt employment of appropriate procedures and treatments to correct such a condition(s); the continuous evaluation of the effects of such treatment(s); the adjustment of the course of such treatment(s) in response to such evaluation(s); and the duty of appropriate notification to the Plaintiff of the various alternatives and risks involved in various modalities of treatment.

17. On or about March 30, 2005, the Plaintiff, Kimberly Divelbliss, presented to Western Maryland Health System, Memorial Campus, in Cumberland, Maryland, for tonsillectomy surgery. In preparation for surgery, the Plaintiff came under the care of the

Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, for surgical anesthesia. Prior to the procedure, the Defendant/Health Care Provider, Meera Appaswamy, M.D., assessed the Plaintiff, and in the operating room on March 30, 2005, the Defendant/Health Care Provider, Meera Appaswamy, M.D., performed the intubation. The medical record reflects that it was a difficult intubation, requiring multiple attempts with various instruments until, on the fourth attempt, the Defendant/Health Care Provider "railroaded" an endotracheal tube "over bougie" to achieve intubation. Thereafter, the Plaintiff, Kimberly Divelbliss, went into bronchospasm, and medications were administered and the surgeon decided to cancel the surgery. Thereafter, the Plaintiff, Kimberly Divelbliss was noted to buck and vomit. The cuff of the endotracheal tube was noted to be ruptured, from "railroading tube over bougie," and the record reflects that the cuff was reinflated. Thereafter, the Plaintiff, Kimberly Divelbliss suffered a second event of bronchospasm, with her pulse oximeter registering deep reductions in blood oxygenation for a period of several minutes. Gastric contents were suctioned from the endotracheal tube, indicating that it had been improperly placed in the esophagus. The Plaintiff, Kimberly Divelbliss, experienced respiratory failure and became hypoxic, leading to neurologic impairment.

18. The Plaintiff further alleges that the injuries, damages and losses sustained by the Plaintiff, Kimberly Divelbliss, were due to the negligent and careless acts and omissions of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through

their real, apparent and/or ostensible agents, servants and/or employees, which breached their aforementioned duties to the Plaintiffs.

19. The negligent and careless acts and omissions of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, include but are not limited to:

- a. failing to employ adequate diagnostic procedures and tests to determine the nature and severity of the medical status and/or conditions of the Plaintiff;
- b. failing to exercise reasonable care in the timely and careful diagnosis of such conditions;
- c. failing to exercise reasonable care in employing appropriate treatments and procedures to correct or address such conditions;
- d. failing to exercise reasonable care in evaluating the effects of any treatments or surgical procedures to correct or address such conditions;
- e. failing to exercise reasonable care in adjusting the chosen course of treatment or care provided to the Plaintiff; and
- f. being otherwise careless and negligent.

20. As a result of the negligence of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their agents, servants and/or employees, the Plaintiff, Kimberly Divelbliss, experienced a severe shock to her nerves and nervous system, pain, mental anguish, unnecessary procedures, unnecessary hospital and medical care and expenses, and otherwise was injured and damaged.

21. All of the injuries and damages complained of were caused by the negligence of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence by the Plaintiffs contributing thereto.

WHEREFORE, the Plaintiffs, Kimberly and Ty Divelbliss, bring this claim against the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C.

COUNT II

**(Informed Consent -- Meera Appaswamy, M.D.,
and Cumberland Anesthesia and Pain Management Associates, P.C.)**

22. The Plaintiffs, Kimberly and Ty Divelbliss, repeat, reallege, adopt and incorporate by reference paragraphs 1 through 15 of this Statement of Claim as though fully set forth herein.

23. The Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, owed to the Plaintiff, Kimberly Divelbliss, the duty of appropriate notification of the various alternatives and risks involved in various modalities of treatment.

24. The Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their agents, servants and/or employees, were negligent in failing to appropriately and adequately obtain an informed consent from the Plaintiff, and were otherwise negligent.

25. The Plaintiff further alleges that as a result of the negligence of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Kimberly Divelbliss, experienced a severe shock to her nerves and nervous system, pain, mental anguish, unnecessary procedures, unnecessary hospital and medical care and expenses, death, and otherwise was injured and damaged.

26. The Plaintiffs further allege that all of these injuries and damages were caused by the negligent acts and omissions of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., individually and through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence or want of due care on the part of the Plaintiff contributing thereto.

WHEREFORE, the Plaintiffs, Kimberly and Ty Divelbliss, bring this claim against the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C.

COUNT III
(Loss of Consortium -- Meera Appaswamy, M.D.,
and Cumberland Anesthesia and Pain Management Associates, P.C.)

27. The Plaintiffs, Kimberly and Ty Divelbliss, repeat, reallege, adopt and incorporate by reference paragraphs 1 through 20 of this Statement of Claim as though fully set forth herein.

28. The Plaintiffs, Kimberly and Ty Divelbliss, aver that they are, and were for all times complained of, husband and wife.

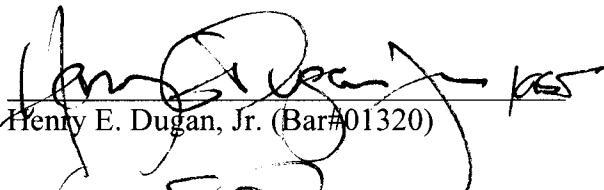
29. The Plaintiffs further aver that, as a direct and proximate result of the acts and omissions of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., through their real, apparent and/or ostensible agents, servants and/or employees, they did suffer and sustain injury, damage and disturbance to their marital relationship and that they were deprived, each from the other, of normal and customary services, society, companionship, affection, assistance, and conjugal relationships, and that the same were thereby interfered with, diminished and destroyed.

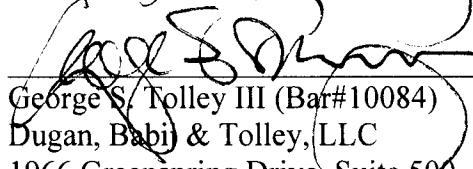
30. The Plaintiffs further aver that all of their injuries, damages and losses complained of, past, present and prospective, were and are due to the negligent acts and omissions of the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C., through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence on the part of the Plaintiffs contributing thereto.

WHEREFORE, this action is brought by the Plaintiffs, Kimberly and Ty Divelbliss, against the Defendant/Health Care Providers, Meera Appaswamy, M.D., and Cumberland Anesthesia and Pain Management Associates, P.C.

ELECTION FOR JURY TRIAL

The Plaintiffs in the above titled claim elect to have this case heard before a jury panel.


Henry E. Dugan, Jr. (Bar#01320)


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